#### STATE OF MICHIGAN MICHIGAN ADMINISTRATIVE HEARING SYSTEM ADMINISTRATIVE HEARINGS FOR THE DEPARTMENT OF HUMAN SERVICES

#### IN THE MATTER OF:



Reg. No.: 2014-10161 Issue No(s).: 3009 Case No.: Hearing Date: County: Kalamazoo

December 5, 2013

## ADMINISTRATIVE LAW JUDGE: Darryl T. Johnson

## HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CF R 431.200 to 431.250; 45 CFR 99. 1 to 99.33; and 45 CFR 205.10. After due notice. a telephone hearing was held on December 5, 2013, from Lansing, Michigan. Participants on behalf of Claim ant include d the Claimant, and epartment of Human Services (Department) Participants on behalf of the D , Eligibility Specialist. included

## ISSUE

Did the Department properly close Claimant's Food A ssistance Progr am (FAP) benefits?

# FINDINGS OF FACT

The Administrative Law Judge, based on t he competent, material, and substantial evidence on the whole record, finds as material fact:

- 1. Claimant was an on-going recipient of FAP.
- On September 16, 2013, a felony warrant was issued for Claimant's arrest, and the 2. Kalamazoo County Sheriff's Department entered into the Law Enforcement Information Network notice of the warrant.
- 3. On October 24, 2013, the Department ma tched Claimant's name with the Fugitive Felon List.
- Claimant was automatica Ily t erminated from receiving FAP benefits as o f 4. November 1, 2013, because of the match with the Fugitive Felon List.
- 5. Claimant was notified of hi s ineligibility in a Notice of Case Action dated Oc tober 14, 2013.
- 6. Claimant requested a hearing on November 5, 2013.

## CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Service s Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), D epartment of Human Servic es Reference Tables Manual (RFT), and Department of Human Services Emergency Relief Manual (ERM).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food Stamp Act of 197 7, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 271. 1 to 285.5. The Department (formerly known as the Fam ily Independence Agency) administers FAP pursuant to MCL 400.10 and Mich Admin Code, R 400.3001 to .3015.

The Claimant testified that he was charged with Operating While Impaired and carrying a concealed weapon as a result of an accid ent on August 25, 2013. He was informed that a warrant was iss ued for his arrest and he surrendered hims elf. He was released the same day and remains free on a personal recognizance bond. He has a preliminary examination scheduled for December 9, 2013.

Michigan statute provides in MCL 400.10b t hat "the department shall not grant public assistance under [the Soc ial Welfare Ac t] to an individual if t he department receives information . . . that the indiv idual is subject to arrest under an outstanding warrant arising from a felony charge against that individual . . . "

The Claimant originally had his preliminary examination scheduled for November 20, 2013. That examination was moved to Decem ber 9, 2013. Perhaps coinc identally, the Department provided a letter (Page 1 of Exhi bit 2) dated Novem ber 20, 2013, stating the Law Enforcement Information Network show ed that Claimant "Was identified as an individual subject to an arrest under an outstanding warrant arising from a felony charge . . . . Felony warrant issued 9/16/2013."

BEM 204 describes a f ugitive felon as a person who "I s subject to arrest under an outstanding warrant arising from a felony c harge against that person . . .." ERM 202 notes that fugitive felons are not eligible for emergency relief. BAM 811 states:

"Michigan State Polic e (MSP) identifies c lients who are currently fugitive felons on a monthly basis. MSP also id entifies when the client is no longer a fugitive felon on a daily basis."

"This automated process in Bridges identifies an exact match based on first name, last name, date of birth, social security number and gender."

"The monthly match will set to close an y clients ide ntified as a fugitive felon."

"When Bridges sets a client to clos e, the DHS-1605, Notic e of Case Action, will be generated. This notice will inform the client that they have a criminal justice disqualific ation showing, and to go to a local law enforcement agency to resolve the issue."

"The daily fugitive felon match will identify those who have a criminal disqualification on an active cas e who are no longer a fugitive f elon and create a task and reminder. The speciali sts are to update the c onviction screen and review eligibility within the standard of promptness which is 10 days for FAP and 15 days for the other programs."

There is no dispute that a warrant was issued for the Claimant's arrest on felony charges. The Claim ant testified that he surrendered himself to the Kalam azoo County Sheriff's Department and was r eleased on bond. According to the online "The Law Dictionary", a "fugitive" is "O ne who flees; always used in law with the implication of a flight, evasion, or escape from some duty or penalty or from the consequences of a misdeed." http://thelawdictionary.org/fugitive/

When the Department pr esents a case for an adminis trative hearing, policy allows the Department to use the hearing summary as a guide when presenting the evidence, witnesses and exhibits that support the Department's position. See BAM 600, page 28. But BAM 600 als o requires the Department to always include the following in planning the case presentation: (1) an explanation of the action(s) taken; (2) a summary of the policy or laws used to determine that the action taken was correct; (3) any clarifications by central office staff of the policy or laws used; (4) the facts which led to the conclusion that the policy is relevant to the disputed case action; (5) the DHS procedures ensuring that the client received adequate or timely notice of the proposed action and affording all other rights. See BAM 600 at page 28. This implies t hat the Department has the initial burden of going forward with evidence during an administrative hearing.

Placing the burden of proof on the Department is a question of policy and fairness, but it is also supported by Michigan Iaw. In Mc Kinstry v Valley Obstetrics-Gynecology Clinic, PC, 428 Mich 167; 405 NW 2d 88 (1987), the Michigan S upreme Court, citing Kar v Hogan, 399 Mich 529; 251 NW2d 77 (1979), said:

The term "burden of proof" encompasses tw o separate meanings. 9 Wigmore, Evidence (Chadbourn rev), § 24 83 et seq., pp 276 ff.; McCormick, Evidence (3d ed), § 336, p 946. One of these meanings is the burden of per suasion or the risk of nonpersuasion.

The Supreme Court then added:

The burden of producing evidence on an issue means the liability to an adverse ruling (generally a finding or a directed verdict) if evidence on the issue has not been produced. It is usually cast first upon the party who has pleaded the existence of the fact, but as we s hall see, the bur den may s hift to the adversary when the pleader has his initial duty. The burden of producing evidence is a critical mechanism in a jury trial, as it empowers the judge to dec ide the ca se without jury consid eration when a party fails to sustain the burden.

The burden of persuasion bec omes a crucial factor only if the parties hav e sustained their burdens of producing evidence and only when all of the evidence has been introduced. See McKinstry, 428 Mich at 93-94, quoting McCormick, Evidence (3d ed), § 336, p 947.

In other words, the burden of producing ev idence (i.e., going forward with evidence) involves a party's duty to introduce enough evidence to allow the trier of fact to render a reasonable and informed decis ion. Thus, the Department must provide sufficient evidence to enable the Administrative Law Judge to ascertain w hether the Department followed policy in a particular circumstance. It must all so prove in cases such as this that a Claimant is, and was, a fugitive felon.

The Department provided a Notice of Case Action dated October 14, 2013, in which the Claimant was informed that his assistance was closed because of a "criminal justice disqualification." The Department also provided the November 20, 2013 letter referenced above which states that the Department verified on November 20, 2013 that the Claimant was subject to an outstanding warrant. The Claimant testified that he had appeared in court in October and was released on bond. I nasmuch as the Claimant was out on bond when the Department verified that he is subject to arrest under a n outstanding warrant, and since the Claimant has a pending hearing in the Circuit Court on the felony charges, the conclusion must follow that he remains a fugitive felon.

The Claimant's contention that he is not a "fugitive" felon sinc e he has surrendered himself in response to the warrant is not illogical. The fact that he has been released on a personal recognizance bond is indicative of a be lief on the part of the criminal court that he does not pose a risk of flight. Howe ver, the Department has provided evidence that he is still "subject to an arrest under an outstanding warrant arising from a felony charge..."

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department satisfied its burden of showing that it acted in accordance with Department policy when it close d Claimant's FAP benefits.

## **DECISION AND ORDER**

Accordingly, the Department's decision is **AFFIRMED**.

Darryl T. Johnson Administrative Law Judge for Maura Corrigan, Director Department of Human Services

Date Signed: December 6, 2013

Date Mailed: December 6, 2013

**NOTICE OF APP EAL:** The claimant may appea I the Dec ision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely Request for Rehearing or Reconsiderati on was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

Michigan Administrative Hearing Syst em (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a par ty within 30 days of the mailing date of this Dec ision and Order . MAHS will not order a rehearing or reconsideration on the Department's mo tion where the final decis ion cannot be implemented within 90 days of the filing of the original request (60 days for FAP cases).

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the or iginal hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the clai mant must specify all reas ons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings Reconsideration/Rehearing Request P.O. Box 30639 Lansing, Michigan 48909-07322

